

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission,	)	
On Its Own Motion	)	
	)	Docket No. 07-0483
Development of net metering standards	)	
required by P.A. 95-0420.	)	

**VERIFIED INITIAL COMMENTS  
OF THE PEOPLE OF THE STATE OF ILLINOIS**

The People of the State of Illinois (the “People”), by and through Lisa Madigan, Attorney General of the State of Illinois, hereby file these initial comments pursuant to the schedule established by the Administrative Law Judge (“ALJ”) in this docket. The comments pertain to the “target” draft net metering rule circulated by ICC Staff on January 11, 2008.

**INTRODUCTION**

The People have remarkably few comments to offer at this point in the process. That is due in no small part to the effective manner in which Staff has worked with the parties in this proceeding to develop consensus language on most of the key issues addressed in the net metering “target” draft general rule. In all but one case, the comments which follow are clarifying in nature or minor nonsubstantive corrections to the text. The sole instance in which the People seek a substantive change to the draft rule is in Section 465.90, where we propose to add consumer protection language relating to net metering agreements with Alternative Retail Electric Suppliers (“ARES”).

## COMMENTS AND PROPOSED REVISIONS TO THE RULE

**465.40(d)** The People propose the addition of the following sentence to this subsection to clarify the status of net metering applicants that submit applications during the April 2008 initial open enrollment period, but fail to obtain “enrollment priority” in the lottery authorized by 465.40(c). The proposed language specifies that those applicants will be first in the queue established immediately after the open enrollment period. Our proposed language is shown in bold:

- d) After the end of the open enrollment period, or after any applicable limits provided for in subsection (b) have been met, whichever comes first, net metering enrollment priority shall be established on a first-come, first-serve basis, according to the electricity provider’s date stamp indicating receipt of a completed net metering application. **Applicants that applied during the open enrollment period that did not establish enrollment priority during the open enrollment period shall have their enrollment priority established in accordance with this subsection (d) based on the date stamp of the application submitted during the open enrollment period.**

**465.50(a)(1)(ii)** The People propose the addition of the following phrase to this subsection to make clear that the electricity provider may assess charges only on the quantity of electricity consumed by a net metering customer that exceeds the quantity of electricity generated by that customer from an eligible facility. Our proposed language is shown below in bold:

- ii) If the customer is a net purchaser of electricity during the billing period, the electricity provider shall assess charges **to the net amount purchased** at the tariffed or contract rate, as appropriate, under which the customer is taking service from the electricity provider.

**465.50(b)(1)(i)** The People propose an addition to this subsection to make it parallel with other subsections relating to billing by specifying that net sellers will be compensated at a specified price multiplied by the net amount of electricity sold to the electricity provider. At present this subsection specifies only the price to be paid by the electricity supplier. We proposed additional language to make clear that the net seller will be compensated at that price for the net amount of electricity sold to the electricity supplier. The People's proposed revision is shown below in bold:

i) The utility shall determine whether the customer is a net purchaser or a net seller of electricity during the billing period. If the customer is a net purchaser of electricity during the billing period, the electricity provider shall apply the applicable tariffed rate to the net amount purchased. If the customer is a net seller of electricity, the electricity provider shall compensate the customer at the electricity provider's avoided cost of electricity supply, **multiplied by the net amount of electricity sold to the electricity provider.**

**465.90(a)** The People propose additional language in this subsection to protect consumers that have existing retail contracts with ARES, where those contracts require the customer to pay a fee to terminate service. The new language would ensure that during the pendency of such a contract a customer would not be faced with a Hobson's choice – paying a switching fee to obtain the net metering terms that utilities are required to offer versus staying with an ARES that offers less favorable terms for net metering. Because a customer in this position lacks meaningful choices, an ARES could exploit its unequal bargaining power to provide net metering on terms less favorable than the minimum terms specified

for utilities. This language is needed to protect consumers against this type of unconscionable conduct which, under Illinois law, “encompasses the absence of meaningful choice by one of the parties . . . .” Hartford Fire Insurance, 194 Ill.App.3d at 116, 141 Ill.Dec. 64, 550 N.E.2d 1110. The People’s proposed revision is shown below in bold:

- a) In accordance with Section 16-107.5(e) and (f) of the Act, nothing in this Part is intended to prevent an arms-length agreement between an electricity provider and an eligible customer that either (i) that sets forth different prices, terms, and conditions for the provision of net metering service, including, but not limited to the provision of the appropriate metering equipment for non-residential customers, or (ii) sets forth the ownership or title of renewable energy credits. In accordance with Section 16-107.5(m) of the Act, nothing in this Part is intended to affect existing retail contracts between an alternative retail electric supplier and an eligible customer. **However, in cases where an existing retail contract requires an eligible customer to pay a fee to terminate service with the alternative retail electric supplier, the alternative retail electric supplier must offer net metering service to that customer on terms that meet at least the minimum requirements set forth in Section 465.50 of this Part .**

#### PROPOSED CORRECTIONS TO THE TEXT

In Section 465.50(a)(1)(iii) “annual period” should be “Annual Period”.

In Section 460.50 (b)(1)(i) the fourth line should read: “. . . rate by the amount purchased by or sold to the customer . . . .”

WHEREFORE, for the above-stated reasons, the People respectfully request that the Administrative Law Judge recommend Commission approval of the proposed net metering rule, modified as described herein.

Respectfully submitted,

The People of the State of Illinois  
by LISA MADIGAN, Attorney General

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Dated: January 16, 2007

STATE OF ILLINOIS

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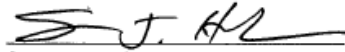
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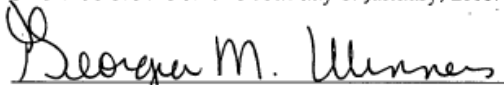
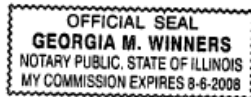
VERIFICATION

I, Susan J. Hedman, state that I have read the foregoing Initial Comments of the People of the State of Illinois in ICC Docket No. 07-0483, that I know the contents thereof, and that to the best of my knowledge, information and belief, the contents are true and correct.



Susan J. Hedman  
Senior Assistant Attorney General

Sworn before me on this 16th day of January, 2008:

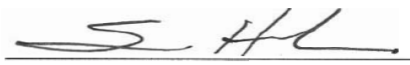
  
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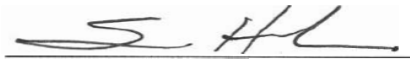
**NOTICE OF FILING**

PLEASE TAKE NOTICE that on January 16, 2008 the People of the State of Illinois filed the Verified Initial Comments of the People of the State of Illinois in the above-captioned proceeding via e-Docket with the Chief Clerk of the Illinois Commerce Commission at 527 E. Capitol Avenue, Springfield, Illinois 62701.

By:   
Susan Hedman  
Senior Ass't Attorney General

**CERTIFICATE OF SERVICE**

I, Susan Hedman, hereby certify that the foregoing documents, together with this Notice of Filing and Certificate of Service, were sent to all parties of record listed on the attached service list by e-mail on January 16, 2008. Paper copies will be provided upon request.

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